

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA)
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GERREN DARTY)

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DOCKET NO. 3:10-CR-238

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE ROBERT J. CONRAD, JR
UNITED STATES CHIEF DISTRICT COURT JUDGE
NOVEMBER 16, 2011

APPEARANCES:

On Behalf of the Government:

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On Behalf of the Defendant:

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Official Court Reporter
United States District Court
Charlotte, North Carolina

P R O C E E D I N G S

NOVEMBER 16, 2011, COURT CALLED TO ORDER 11:30 a.m..

THE COURT: We're here in the matter of United States V Garren Darty for sentencing. Mr. Darty pled guilty before a magistrate judge on April 21st, at a hearing in which he answered questions under oath and then the magistrate judge found that his plea was knowingly and voluntarily made. There were no objections to these findings and the Court will adopt them as its own today.

Do the parties stipulate that there is a factual basis to support the entry of a plea of guilty and that the Court may rely upon the offense conduct as set forth in the Presentence Report to establish that factual basis?

MR. EXUM: Yes.

MR. KAUFMAN: Yes, Your Honor.

THE COURT: Based upon that stipulation, as well as Mr. Darty's admission before the magistrate judge, the Court finds that there is a factual basis to support the entry of a plea of guilty.

Mr. Darty, your case was referred to the Federal Probation Department for the purpose of preparing a presentence report. I've received and reviewed that report. Have you had a chance to read the Presentence Report?

THE DEFENDANT: Yes, sir.

THE COURT: Do you believe you understand it?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you had enough time to go over the
3 Presentence Report with your attorney?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. You may sit down at this
6 time.

7 Mr. Exum, I don't believe the defendant had any
8 objections to the Presentence Report?

9 MR. EXUM: We did not, Your Honor.

10 THE COURT: But I'll be glad to hear from the
11 government on your objections.

12 MR. KAUFMAN: Thank you, Your Honor.

13 The first objection relates to the firearm. I don't
14 believe that the facts are in dispute, I think its more the
15 interpretation.

16 Ultimately, Parker Coleman, not only a known leader
17 of the Charlotte part of this drug conspiracy, he was also
18 known to have firearms. We have a witness we anticipate will
19 be testifying at the trial against Mr. Coleman that he
20 actually obtained firearms for him.

21 THE COURT: And who is that witness?

22 MR. KAUFMAN: Well, actually there are a couple, one
23 is Mark Hunt. And Mr. Coleman was trying to obtain firearms
24 from him. We know that another witness, Stephanie Peppers who
25 will be testifying, that she actually provided one of the

1 firearms seized -- provided one of the firearms to
2 Mr. Coleman. The one that was seized on the first incident,
3 which is November 2nd at his house when the search warrant was
4 executed.

5 THE COURT: How about evidence that Mr. Darty was
6 aware that Mr. Coleman possessed firearms?

7 MR. KAUFMAN: We only have circumstantial evidence,
8 Your Honor. We know that Mr. Darty and Mr. Coleman were close
9 friends.

10 THE COURT: Was Mr. Darty interviewed?

11 MR. KAUFMAN: Mr. Darty was interviewed.

12 THE COURT: Was he asked about Mr. Coleman's firearm
13 possession?

14 MR. KAUFMAN: He was asked about his -- he was asked
15 about his firearms possession. And right now Agent McDonald
16 is reviewing the report. I can say this: We walked away from
17 that interview having confronted him. We do not believe he
18 was truthful with us during his debrief.

19 THE COURT: On this particular issue or other
20 issues?

21 MR. KAUFMAN: On this and other issues.

22 THE COURT: And so he was asked about his knowledge
23 of Mr. Coleman's firearm possession and you believe he was
24 less than candid with you in response?

25 MR. KAUFMAN: Your Honor, may I have a moment just

1 to check?

2 THE COURT: Well, I mean -- sure.

3 (Pause.)

4 MR. KAUFMAN: Your Honor, when he was confronted
5 with the firearms issue with Mr. Coleman, he denied having
6 seen Mr. Coleman with firearms. He only stated that he had
7 seen a firearm at Ms. Peppers' residence, but not at
8 Mr. Coleman's residence.

9 THE COURT: And what evidence does the government
10 have that would indicate that that was a false denial?

11 MR. KAUFMAN: Your Honor, the -- again, it's
12 circumstantial. One is that he was known to have firearms.
13 And he was trying to get additional firearms. He was a close
14 friend of Mr. Coleman's. He had -- even when we executed the
15 search warrant on November 2nd, there was a picture of him,
16 that is Mr. Coleman, Mr. Darty, another co-conspirator in the
17 case and a fourth individual --

18 THE COURT: Were there firearms in that picture?

19 MR. KAUFMAN: They were not firearms in the picture.

20 THE COURT: Just being a friend of Coleman's,
21 triggers a -- in your mind -- triggers a two-level enhancement
22 for possessing a firearm in connection with a drug trafficking
23 offense?

24 MR. KAUFMAN: No, it doesn't, Your Honor. It's a
25 matter of him being close friends with him. With him being a

1 co-conspirator of his.

2 I would add that on November 16th, two weeks later
3 after that search warrant, Mr. Coleman and Mr. Darty were
4 arrested together. What happened was, they had arrived
5 together in Mr. Darty's vehicle, to pick up Mr. Coleman's SUV.
6 Law enforcement was surprised to find Mr. Darty with
7 Mr. Coleman at that particular moment, thinking he had gone
8 back to California.

9 Mr. Coleman took possession of the keys from the
10 dealership where the SUV was being serviced -- or was being
11 repaired. Mr. Coleman gave the keys to Mr. Darty, and for
12 reasons that we don't know right now, Mr. Coleman stayed in
13 Mr. Darty's Volkswagen and was leaving the scene in that, when
14 Mr. Darty was in the SUV, which is actually Mr. Coleman's
15 vehicle.

16 THE COURT: So Coleman was in Darty's car and Darty
17 was in Coleman's car?

18 MR. KAUFMAN: Yes, Your Honor. And law enforcement
19 arrested both of the men on scene there. And Mr. Darty was
20 driving the vehicle that had the two firearms in a non-factory
21 installed compartment behind the passenger seat. Now it was
22 not in plain view and --

23 THE COURT: Were there any drugs -- were there any
24 drugs seized from that vehicle at that time?

25 MR. KAUFMAN: Not at that time, Your Honor, no.

1 THE COURT: So what's the connection between the
2 firearms in the compartment of the vehicle and drug
3 trafficking?

4 MR. KAUFMAN: The connection is that Mr. Coleman
5 would use the vehicle to drive around couriers,
6 co-conspirators, and the firearms being there, are a tool of
7 the trade to protect himself, his stash, his co-conspirators.

8 THE COURT: Is there evidence that the firearms were
9 in that vehicle on other occasions?

10 MR. KAUFMAN: We do have -- may I have a moment,
11 Your Honor?

12 (Pause.)

13 MR. KAUFMAN: Your Honor, I'm sorry for consulting
14 with Agent McDonald every so often. But what he was telling
15 me was that it wasn't those two particular guns that were
16 known to have been in that vehicle before. But Mr. Coleman
17 was known to keep firearms and money, drug proceeds in that
18 very same compartment on prior occasions. And so it is
19 circumstantial evidence that that's --

20 THE COURT: Was the defendant asked about the
21 firearms in the car -- the firearms that were found in the car
22 on November 16th?

23 MR. KAUFMAN: Your Honor, when he was asked about
24 his knowledge about firearms and Mr. Coleman, he denied having
25 any knowledge of firearms.

1 THE COURT: How about on this particular occasion,
2 he was driving a car. Did anybody ask him whether the car he
3 was driving, whether he knew there were guns in the car at the
4 time?

5 MR. KAUFMAN: Your Honor, we believe that he was
6 asked that specific question, and he didn't know about the
7 firearm. That's what he said.

8 THE COURT: So -- and is there any evidence -- does
9 the government have any evidence that that was a false denial?

10 MR. KAUFMAN: Well, Your Honor, I can say, yes,
11 indirectly.

12 THE COURT: Just as general people, it was widely
13 known that Coleman had guns? Is that --

14 MR. KAUFMAN: That's part of it, Your Honor, yes.

15 THE COURT: But there's nobody saying --

16 MR. KAUFMAN: No one said --

17 THE COURT: -- I put the guns in the car in Darty's
18 presence or any direct knowledge like that?

19 MR. KAUFMAN: There's no statement like that, Your
20 Honor.

21 THE COURT: So again, you're seeking a two-level
22 adjustment for something that's reasonably foreseeable to the
23 defendant that a co-defendant has done, and you're basing it
24 largely upon this widely known theory with some photographic
25 evidence of a relationship, but no -- no direct evidence that

1 the defendant ever had specific knowledge of the firearms
2 either on November 2nd or November 16th?

3 MR. KAUFMAN: Correct, Your Honor. It's
4 circumstantial evidence.

5 THE COURT: All right. I'm gonna overrule the
6 government's objection based upon the 2D1.1(b)(1), possession
7 of a firearm by a co-defendant. I'm gonna find that the
8 government hasn't established by a preponderance that the
9 defendant had knowledge of the co-defendant's possession, or
10 that there was a nexus between any firearm possession and the
11 drug trafficking that forms the basis of the conspiracy.

12 Do you have any other objections to the Presentence
13 Report?

14 MR. KAUFMAN: Yes, Your Honor.

15 One of them relates to the criminal history points,
16 as well -- and there's also relating to the safety valve.

17 THE COURT: Let's deal with the criminal history
18 points first.

19 MR. KAUFMAN: Yes, Your Honor.

20 There were -- this relates to paragraph 69. In
21 paragraph 69 Mr. Darty was previously convicted on August 6th
22 of 2008 with possession with intent to sell and deliver
23 marijuana. The conspiracy for which he was charged and which
24 he pled guilty -- I'm just double checking the indictment, but
25 I believe it was in 2009. Yes, 2009, to the date of the

1 indictment.

2 Therefore this is a -- even if it were connected,
3 and we -- it would seem that it is close in time, so it
4 probably is connected, but it is -- to the current crime that
5 he's charged with, we submit that it is a prior offense.

6 THE COURT: How could it be connected but prior?

7 MR. KAUFMAN: Well, because he's charged with a
8 crime, a conspiracy, that we can prove from 2009 to the date
9 of the indictment. Ultimately his stop was -- and I'm sorry.
10 When I quoted the date, that was the date of the incident. He
11 ended up pleading guilty in 2009, but it was in 2008 that he
12 was stopped. That precedes the charge date of the conspiracy.

13 THE COURT: I understood your objection to say that
14 the conviction did not count as a prior conviction because
15 although it was related to the instant offense, that somehow
16 it was prior. And I didn't understand that objection. You're
17 now saying it was unrelated?

18 MR. KAUFMAN: No, Your Honor. What I'm saying is it
19 was related, but it is not part of the conspiracy period that
20 he's been charged with and convicted.

21 THE COURT: In what way was it related?

22 MR. KAUFMAN: Well, he had a large amount of
23 marijuana and U.S. currency. And it would appear that that
24 was part of the same overall marijuana trafficking conspiracy.
25 I mean, it had the appearance of it.

1 And, you know, this case has multiple aspects of the
2 conspiracy. Our understanding is, it came from an individual
3 named Ahmed Daniel Crockett, who is the lead defendant in
4 another related indictment. So there's an argument as to
5 potentially being part of, but proceeding the charged
6 indictment in this -- sorry, charged conspiracy in this
7 indictment or in a related indictment.

8 THE COURT: Isn't the question whether it came
9 within the time period of the charged conspiracy, whether that
10 was the same conspiracy that existed in 2009 as charged, but
11 may have started before that time period, or is it a separate
12 conspiracy or a separate unrelated substantive offense?

13 It seems to me that if it's part of the same
14 criminal agreement even though it was in August of the year
15 before, that it would be part of the instant offense, but that
16 if it was separate and apart from that, your argument might be
17 well taken.

18 So I'm trying to figure out from the government,
19 what the government's theory is with respect to the
20 August 2008 trafficking offense?

21 MR. KAUFMAN: Your Honor, we actually struggled with
22 it ourselves, because not -- even putting aside the time
23 period. Even if in theory the charged conspiracy period
24 preceded the date of his arrest and conviction in state court,
25 the source of that drug money and those drugs, it may be

1 Parker Coleman and the other 21 defendants, that indictment.
2 But we actually believe that it was from Ahmed Crockett, which
3 is in 3:10-cr-245. And that's related to this investigation,
4 but it would be, I think considered potentially as a multiple
5 or separate conspiracy.

6 THE COURT: That's what -- I'm asking you, what is
7 your theory and what are the facts that support that theory?

8 MR. KAUFMAN: Your Honor, when we debriefed
9 with Mister -- Your Honor, our understanding of the facts is
10 that Mr. Darty was in a conspiracy with Mr. Crockett. And in
11 January of 2009, there was a seizure by the investigative team
12 of this case that caused that relationship to end.

13 THE COURT: In when, January of '09?

14 MR. KAUFMAN: January of '09. That's why we have
15 the conspiracy charge. And it's our understanding that it was
16 Mr. Darty who then after that seizure, introduced the two
17 heads of this indictment, Mr. Adams in California and
18 Mr. Coleman here in Charlotte. So it's our understanding that
19 Mr. Darty is the one who introduced them to each other after
20 the January 9, 2009 seizure.

21 So this is why we struggle with it because that --
22 this 2009 to the present indictment of 238, which is the one
23 to which he's -- for which he's pleading guilty and being
24 sentenced, it's not -- I have to tell the Court that there is
25 a connection to the other Daniel Crockett conspiracy, but

1 there was a break and a new relationship. So it depends on
2 how you view a conspiracy, how expansive or limited you view
3 it.

4 THE COURT: Would you view it as the same course of
5 conduct or common scheme or plan as the offense of conviction?

6 MR. KAUFMAN: The course of conduct was different.
7 The Crockett indictment did not deal with the use of the
8 airlines and that whole connection. The sources of supply in
9 California were different, but they knew each other. So it's
10 not a clear-cut case, Your Honor.

11 It does appear that it was a separate different,
12 conspiracy, but they -- they knew each other and were -- there
13 was a relationship. In fact, Mr. Darty really, in a lot of
14 senses, was the pivotal connection between those two groups of
15 indictments.

16 THE COURT: What says the defendant?

17 MR. EXUM: Thank you, Your Honor.

18 Your Honor, Mr. Darty was initially indicted with
19 events that say, from in or about 2007. That is what's
20 referred to as the Crockett indictment.

21 Mr. Darty is only on the Coleman indictment because
22 he had not yet pled, and the other five individuals in the
23 Crockett indictment had pled. And what was indicated to me
24 was that administratively, they would just simply move him to
25 the Coleman indictment because they are essentially part and

1 parcel of the same.

2 As it relates to the offense that was in Greensboro
3 that the prosecutor was talking about, I recall being told at
4 the beginning of the case, because he got a plea that is
5 somewhat unusual, unsupervised probation. And that the
6 government was aware of that situation, and that to some
7 extent the government, they receipted in the plea that the
8 gentleman ultimately got.

9 Because this is all part and parcel of the same.
10 They were all intertwined. They are all part of the same
11 conduct. And as a result, that is why I believe -- and I
12 think in a court of law, the probation office when this
13 objection was filed, indicated that it would not count for any
14 of the two purposes that the government indicated. It's part
15 of the same drugs, part of the same activity. And was not
16 a -- was not prior in that sense, as you read the guidelines.
17 So I don't think that that applies. I think this is a
18 criminal history level one as relates to that particular
19 conviction.

20 THE COURT: All right. I'm going to overrule the
21 government's objection to the criminal history computation.

22 It appears to the Court that the conviction
23 referenced in paragraph 69 of the presentence report, was part
24 of the same course of conduct or common scheme or plan as the
25 instant offense, and therefore is considered relevant conduct

1 under Section 1B1.3. And as relevant conduct it doesn't
2 constitute a prior conviction.

3 So there does appear to be different sources of
4 controlled substances at different times. But as I understand
5 the facts, the defendant was pivotal to the jointly undertaken
6 criminal activity. Same type of drug, same type of controlled
7 substance, possibly different sources at different times.

8 But it appears to the Court that it's part of the
9 relevant conduct in the instant offense, and therefore not a
10 countable or counted conviction under 4A1.2. So I'll overrule
11 the government's objection on that. Do you have any other
12 objections?

13 MR. KAUFMAN: Yes, Your Honor. With regard to
14 criminal history, the last issue was --

15 THE COURT: Oh, the safety valve.

16 MR. KAUFMAN: Well Yes, Your Honor, that too. But
17 even before we get to that, it would be mooted by this issue.
18 And I believe this -- obviously I say this after you already
19 overruled the prior objections. But I believe this is a
20 stronger point, which is that he was on probation after
21 November 17th of 2009, but continued to be involved in the
22 conspiracy.

23 And so it's our position that it doesn't have to be
24 a prior offense. 4A1.1(d) only talks about committing the
25 instant offense while under any criminal justice sentence.

1 This is almost akin to when an individual has an 851
2 during the course of ongoing conspiracy --

3 THE COURT: Where is your objection? What paragraph
4 are you objecting to?

5 MR. KAUFMAN: The objection is to paragraph 71, in
6 that there should be a two-level -- sorry, two criminal
7 history points assessed, because he was committing this
8 offense even after he was placed on probation by the state
9 authorities, which is that offense in paragraph 69.

10 THE COURT: I'm just trying to figure out where you
11 raised this objection prior to the hearing.

12 MR. KAUFMAN: I raised it in document 294, page two
13 of my third paragraph.

14 PROBATION OFFICER: I think it may be objection
15 three, Your Honor.

16 THE COURT: All right. Let me read that.

17 PROBATION OFFICER: They're all inclusive.

18 MR. KAUFMAN: And that's a key issue, Your Honor.
19 When doing calculations under 4A1.1 A, B and C, it does have
20 to be a prior sentence. However this objection doesn't hinge
21 upon Your Honor finding that the state conviction was a prior
22 sentence.

23 Paragraph 4A1.1(d) does not require it to be a prior
24 sentence, just that the defendant committed the offense while
25 under any criminal justice sentence to include, that we would

1 submit, probation as he received on November 17, 2009.

2 THE COURT: And do you have any case law that
3 supports your position that a conviction -- a suspended
4 sentence resulting from a conviction that's part of the
5 relevant conduct may be considered separately for the two
6 point enhancement for committing the offense while under a
7 probationary sentence?

8 MR. KAUFMAN: No, Your Honor. I searched for hours
9 in this circuit and other circuits, and I was not able to find
10 anything on point for this specific issue.

11 But ultimately, if Your Honor thinks about what's
12 the reason for the two-level increase for when somebody's on
13 probation and committing an offense. I mean, the idea is once
14 you've been placed on probation you should not be committing
15 further crimes. And in this case he was placed on probation
16 November 17th of 2009 and he was -- he did not stop.

17 So our position is that while A, B and C under 4A1.1
18 speak in terms of a prior sentence, D does not, and it makes
19 sense for policy reasons.

20 THE COURT: Is there any commentary that supports
21 your position?

22 MR. KAUFMAN: No, Your Honor. There's -- I don't
23 believe there's commentary that either supports or rebuts it.

24 THE COURT: What says the defendant?

25 MR. EXUM: Again, Your Honor, I agree with the

1 response given in the Presentence Report. I think the
2 government's objections two and three go hand-in-hand.
3 Because their objection two, the determination is that that
4 offense was not countable.

5 THE COURT: Well the argument is that A, B and C
6 have within it the limitation of it being a prior sentence,
7 whereas D does not. And App. Note Four says that if the
8 defendant committed any part of the instant offense while
9 under a criminal justice sentence, including probation, you
10 add the two levels. What do you say to that?

11 MR. EXUM: I don't think the two levels should be
12 increased. Again, I don't think it's applicable based upon
13 the determination of the non-countable offense. And I think
14 there's a reason there's not any case law as it relates to
15 that. And that reason would be, I don't think it applies
16 whatsoever.

17 THE COURT: Well, wouldn't there be case law that
18 says that?

19 MR. EXUM: I'm sorry?

20 THE COURT: Wouldn't there be case law that says
21 that? I mean, do you have any cases that --

22 MR. EXUM: I think it generally stands silent unless
23 there's been a determination like the government wants to
24 make.

25 I think frankly in the government's objection, the

1 motivation is seen in paragraph -- where they indicate that
2 the defendant received an unexpected windfall based upon
3 sentencing.

4 THE COURT: Well, I'm not concerned with the
5 government's motivation. I'm concerned with whether this
6 applies or not.

7 MR. EXUM: I don't think it does, Your Honor.

8 THE COURT: What do you -- the argument's a
9 statutory interpretation argument where three subsections are
10 conditioned by prior sentence, and the fourth one -- actually
11 when you look at A through E, four of the five ways of
12 tabulating points are conditioned on a prior sentence, but D
13 is not.

14 What's the government's evidence that Mr. Darty
15 continued in the conspiracy after the conviction and placement
16 on probation in November of 2009?

17 MR. KAUFMAN: May I have just a moment, Your Honor.
18 (A brief pause was taken in the proceedings.)

19 MR. KAUFMAN: Your Honor, when obtaining information
20 from co-conspirators about Mr. Darty's involvement in the
21 offense, we don't -- at least at our fingertips -- have
22 anybody who specifically says in 2010, versus 2009, Mr. Darty
23 was a part of the conspiracy. So for that I can't bring that
24 to you.

25 But I can say this: You know, the reason why

1 Mr. Darty was even with Mr. Coleman on November 16th when they
2 were arrested, is because they were going to pick up the --
3 Mr. Coleman's vehicle, which the reason it was at the shop was
4 because they had to break into the window because they didn't
5 have Mr. Coleman's keys. Co-conspirators had broken into the
6 vehicle to take marijuana out of it. So he was facilitating
7 the conspiracy by helping him to pick up a vehicle that was
8 being used --

9 THE COURT: That was the day before the conviction,
10 it appears no -- November 16, 2010.

11 MR. KAUFMAN: Correct, Your Honor. So I can't tell
12 you Witness X said that Mr. Darty in middle of 2010 was doing
13 certain acts. I can only say there are people who put him
14 into the conspiracy. But I can't give -- I can't parse it out
15 to a particular date. He was -- the thing is, he was part of
16 the conspiracy. He had not withdrawn.

17 So ultimately, until his arrest, and in fact
18 arguably under the case law, without an affirmative positive
19 withdrawal, all of his acts and the acts of co-conspirators
20 are attributable to him.

21 It would be one thing if we had evidence that he had
22 withdrawn from the conspiracy November 17th of 2009, but we
23 don't.

24 And Your Honor, Agent McDonald reminded me about an
25 incident in July of 2010 in which Mr. Darty had dropped off a

1 co-conspirator by the name of Eric McDonald at the airport.
2 Mr. Eric McDonald, he had dropped off with approximately
3 \$72,000 of money that was intended to be used to purchase
4 marijuana.

5 So he was actually -- we do have evidence that after
6 the date he was placed on probation, he took specific overt
7 acts himself in furtherance of the conspiracy.

8 MR. EXUM: My recollection of that part of the
9 debriefing was that it was part of the Coleman, with Mr.
10 McDonald, Mr. Darty was there, but Mr. Parker Coleman was the
11 one who gave an envelope to McDonald. And whatever happened
12 with that situation, not Mr. Darty.

13 MR. KAUFMAN: And Your Honor, that goes to part of
14 our concerns about Mr. Darty, if we were to even have to get
15 to the next issue, the safety valve, and his honest statements
16 about his full involvement.

17 Because -- well, I guess I can go into more detail
18 if Your Honor needs us to on that point -- on the point of him
19 dropping off the courier at the airport in his own vehicle
20 with the money. And he was present when the courier was
21 handed, was given the money, in his vehicle.

22 Oh, I'm sorry. He was the driver of the vehicle. I
23 don't know who the owner of the vehicle was. But Mr. Darty
24 was in the vehicle, driving the vehicle, was present when the
25 money was given to Mr. McDonald to then bring it to the source

1 of supply in July of 2010.

2 THE COURT: I'm going to grant the government's
3 objection on the two-point adjustment for committing the
4 instant offense while under any criminal justice sentence.

5 I think the 4A1.1(d) provision is -- the absence of
6 the prior sentence caveat is an important one. And that it
7 appears not to require a prior sentence.

8 So the defendant was placed on probation as a result
9 of the 2008 trafficking in -- or actually possession with
10 intent to sell and deliver marijuana, and received a suspended
11 sentence in November of 2009. And was a member of this
12 conspiracy at a point in time past the time he was put on
13 probation.

14 And I think that 4A1.1(d) applies to the conduct of
15 a defendant who continues in a conspiracy after he was placed
16 on probation for a criminal justice sentence.

17 So I will grant the government's objection and
18 assess two criminal history points for committing a portion of
19 the instant offense while under a criminal justice sentence.

20 Any other objections to the Presentence Report?

21 MR. KAUFMAN: Your Honor, we do not believe that we
22 need to go into detail. The last issue is moot, but just for
23 the record we did object to the -- his satisfying the
24 requirement that he provide a full and truthful statement
25 about of all the facts within his knowledge about the instant

1 offense. But because he has more than one criminal history
2 point he would not be safety valve eligible.

3 THE COURT: What is the factual predicate for your
4 belief that he wasn't -- that Mr. Darty did not meet the fifth
5 factor in 5C1.2.

6 MR. KAUFMAN: Your Honor, there are various things
7 that Mr. Darty stated when we met with him that were untrue.
8 The main theme throughout the interview was that he was trying
9 to, if anything, insulate Mr. Coleman from culpability,
10 placing the blame on his -- the co-conspirator Jerry Davis.

11 And as a couple of examples, he stated that he had
12 gone to California with Mr. Coleman. And that while he
13 admitted that he had met Mr. Adams, he claimed that there was
14 nothing that was drug trafficking related.

15 When in fact what happened was, and we actually know
16 this from Mr. Adams, is that Mr. Darty introduced Mr. Coleman
17 to Mr. Adams. And that they specifically were introduced to
18 conduct drug trafficking. And after that meeting is when they
19 started in, I think it was some sort of prescription drugs
20 before they turned to the marijuana trafficking.

21 Oh, I'm sorry. My mistake. It was immediately
22 marijuana.

23 THE COURT: And --

24 MR. KAUFMAN: And that's one example, Your Honor.

25 THE COURT: And so the defendant said that the

1 California trip did not involve drugs, and you have a witness
2 telling you that it did?

3 MR. KAUFMAN: One of the -- yes, Your Honor.

4 THE COURT: And who is that witness?

5 MR. KAUFMAN: That's Milton Adams, one of the
6 participants in the conversation.

7 THE COURT: And how does the Court resolve the
8 factual dispute that exists between Milton Adams and the
9 defendant?

10 MR. KAUFMAN: Well, Your Honor, that's -- when you
11 take that in light of other facts which I can mention as well,
12 the July 2010 incident when Mr. Darty was driving Mr. Coleman
13 and Eric McDonald with the money -- well, actually the details
14 are quite significant.

15 He claimed during the debrief that he didn't see
16 anything about money exchanging hands. It was just -- they
17 were just driving in a car together.

18 When in fact, Eric McDonald, the person who received
19 the money, said that Mr. Darty was driving, Mr. Coleman was in
20 the front passenger seat, and Mr. McDonald was in the back --
21 in the rear passenger seat. That Mr. Coleman had -- while
22 they were all together -- past him this 70 plus thousand
23 dollars.

24 And it's significant that this money was contained
25 in approximately 37 individual envelopes. He was handing him

1 37 different envelopes with approximately \$2,000 in cash. One
2 of them apparently, Mr. McDonald had even recalled, they were
3 all 2,000 except for one which he said may have been less,
4 maybe about \$400.

5 THE COURT: And what is the false information that
6 you believe the defendant provided the government with respect
7 to that incident?

8 MR. KAUFMAN: That Mr. Darty was trying to say that
9 he didn't see Mr. Coleman do any -- give any money to
10 Mr. McDonald. When in fact Mr. McDonald says that -- again,
11 this is somebody who was present for the transaction -- that
12 Mr. Coleman was handing him all of these envelopes with the
13 cash in it.

14 There are other issues as well. There was a dinner
15 meeting where Mr. Darty was present with Mr. Coleman, and then
16 Goldie Crockett and another individual. And this goes to the
17 idea that Mr. Coleman wasn't involved as far as he was aware
18 in this drug trafficking. That they were -- we have multiple
19 witnesses -- or we have witnesses who talk about the dinner
20 and --

21 THE COURT: Does any of this matter in light of the
22 conspiracy guidelines? I mean, what impact --

23 MR. KAUFMAN: Your Honor, I was just saying that
24 even if Your Honor hadn't found the two points, I was saying
25 that it's moot because of those two points. But we would not

1 have found that he would have met the safety valve in any
2 event. But because Your Honor's assessing the two criminal
3 history points --

4 THE COURT: Well even if I didn't assess the two
5 criminal history points. In terms of the safety valve
6 application, you get a two-level reduction, correct, under
7 5K1.2, if you meet the five separate criteria?

8 MR. KAUFMAN: Correct.

9 THE COURT: But when you look at the money
10 laundering conspiracy guidelines, those are more than the drug
11 conspiracy guidelines, and so you wind up at a 33 anyways.

12 MR. KAUFMAN: Actually, Your Honor, there's a cross
13 reference. The short answer is that money laundering, the
14 guideline that apply, is the drug trafficking guidelines plus
15 two.

16 THE COURT: Plus the two. So it does matter.

17 MR. KAUFMAN: So it would impact the money
18 laundering guidelines.

19 THE COURT: I see. All right.

20 PROBATION OFFICER: It would be, Your Honor, if you
21 found that safety valve, the two levels did not apply, I have
22 him being a 35, criminal history level II, based on your
23 rulings thus far.

24 THE COURT: I see. All right.

25 MR. KAUFMAN: And Your Honor, so I think that where

1 we're at, at this point is, 33, Roman II.

2 PROBATION OFFICER: 35, Roman II.

3 MR. EXUM: Criminal history points, correct, the
4 ruling so far --

5 MR. KAUFMAN: I'm looking at page 15, paragraph 64
6 of the PSR.

7 PROBATION OFFICER: Not contingent on whether or not
8 he takes away the two levels.

9 THE COURT: Mewanda, come talk to me.

10 PROBATION OFFICER: I'm sorry.

11 (Pause.)

12 THE COURT: Mr. Exum, the government's argument is
13 that having made the ruling that I did on the criminal history
14 points, that the defendant is ineligible for safety valve
15 consideration. What is your response to that?

16 MR. EXUM: I would like to object to that, Your
17 Honor. But frankly if he's not considered a criminal history
18 level I --

19 THE COURT: So I'm either right or wrong on that
20 point.

21 MR. EXUM: I think if he's not a criminal history
22 level I, then he's not eligible for the safety valve. I would
23 like to argue otherwise, but I believe I cannot.

24 THE COURT: All right. Well I'm going to find that
25 as a result of the ruling that I made on the two-point

1 increase for being, committing a portion of the instant
2 offense while under the criminal justice system, bars safety
3 valve consideration.

4 And having made that ruling it appears to the Court
5 that once you factor in acceptance of responsibility, the
6 defendant's offense level is a 35, criminal history category
7 II. Before any considerations of departure or variance, that
8 the correct guideline level to consult is 188 to 235. Having
9 made the rulings that I have, do the parties agree those are
10 the correct guidelines to consult?

11 MR. KAUFMAN: Your Honor, with respect, I actually
12 believe that Mr. Darty's sentencing range is lower. I believe
13 that his total offense level is 33.

14 THE COURT: And how do you get there?

15 MR. KAUFMAN: The way that the PSR gets there
16 paragraph -- paragraphs 49 through 64. I believe that those
17 are the correct calculations. And we're not talking about a
18 loss of acceptance of responsibility.

19 THE COURT: I know that. So let's walk through
20 that.

21 Paragraph 50, you no longer -- based on the Court's
22 ruling, he doesn't get a two-level reduction --

23 MR. KAUFMAN: Oh --

24 THE COURT: -- correct?

25 MR. KAUFMAN: You know what, Your Honor, I stand

1 corrected. I think I was looking at Count Two and I didn't
2 realize. My apologies.

3 THE COURT: So I'm just asking you whether you agree
4 with the fact that in 50, there's not a two-level reduction
5 for --

6 MR. KAUFMAN: I agree with you that there is no two
7 level --

8 THE COURT: Then 54 is then 36; agreed?

9 MR. KAUFMAN: Yes, Your Honor.

10 MR. EXUM: If there's no two level reduction.

11 THE COURT: Right. Based on the Court's ruling.

12 MR. KAUFMAN: My apologies.

13 THE COURT: Then 55 would be 36. Because it picks
14 up on the adjusted offense level from the drug count. Do you
15 agree?

16 MR. KAUFMAN: Yes, Your Honor.

17 THE COURT: And then there's a two-level adjustment
18 for the money laundering offense, and a reduction for
19 acceptance of responsibility leading to 35.

20 Now Mr. Exum, I know that you disagree with the
21 two-point enhancement, but that is the Court's ruling. And so
22 based upon that ruling, do either of the parties contend that
23 the advisory guidelines are something other than offense level
24 35, criminal history category II?

25 MR. KAUFMAN: No, Your Honor.

1 MR. EXUM: Not other than the objection.

2 THE COURT: Noting your objection. That is the
3 advisory guidelines that the Court consult.

4 Are there any other government objections to the
5 Presentence Report?

6 MR. KAUFMAN: No, Your Honor.

7 THE COURT: All right. Mr. Exum, I'll be glad to
8 hear from you on behalf of Mr. Darty at this time.

9 MR. EXUM: Thank you, Your Honor.

10 Your Honor, I think what you look at this point,
11 when you're considering the sentence, is you consider the
12 opportunity of the person to redeem themselves in the
13 situation that they are in that has brought them to the
14 court's attention.

15 I think when you look at the history of this young
16 man, there are many redeemable factors, and many facts
17 indicate and suggest very strongly that he's going to be a
18 very productive citizen once he is released from
19 incarceration.

20 You start with how he was reared. He was reared by
21 two parents. Which many people in this circumstance were not.
22 Both of his parents are successful and productive citizens.
23 You read the letter that they wrote to the Court and the
24 things that they said about the young man and how he was
25 raised. His mother has risen up the corporate ladder. His

1 father serves in the military, presently serves in the
2 probation office in Los Angeles, California. He has a sister
3 who has been very successful in college at Villanova
4 University here.

5 And I think that Gerren's headed along on that same
6 path. When you look at some of the things that he was
7 involved in and was successful with. You see that he was
8 involved -- he was President and Vice President of Jack and
9 Jills during his teenage years, which wasn't all that long
10 ago, Member of the National Honor Society, outstanding athlete
11 in track and baseball. The Court is aware of the type of
12 character that is developed when people participate in
13 athletics. He was also first runner up in the California
14 State Church of Christ National Youth Conference and
15 Mr. Congeniality competition.

16 He has some college. He did one year at Cal-Poly.
17 He was actually enrolled back at that university just prior to
18 the time that he was arrested and ultimately incarcerated in
19 this case.

20 At that point, and prior to arrest, he had realized
21 that the activities that he was involved in were wrong. That
22 they were ultimately going to cause harm to him, to his
23 family, and to his ability to proceed forward in life.

24 So while he didn't send a formal letter or formal
25 cease and desist order, or anything of that nature, he had

1 essentially decided at that point that what he was doing at
2 that time was wrong and stopped doing that.

3 He became involved in a relationship with a young
4 lady that he hoped to develop and was moving along in that
5 capacity.

6 This young man is a parent who wants to provide a
7 positive role model to his son, set a good example to his son.
8 He knows the activity doesn't do that, but he wants to set
9 that positive activity.

10 Your Honor, we submitted several letters to the
11 Court that expound upon a variety of ways that different
12 people know Gerren. One of the things that they indicate, and
13 one of the things that I've learned about him and seen several
14 times over the years that I've represented him, is that he is
15 a very caring and compassionate person. That he sees nearly
16 anyone as a friend, and that he is very generous as it relates
17 to that.

18 Frankly, when you look at the drug conspiracy, lots
19 of money -- the Court's always going back and forth with these
20 conspiracies. You don't see this guy with expensive homes,
21 cars, any of those trappings. Because he really just let
22 those things go in relation to other people.

23 Even in jail, and I think probably one of the better
24 character letters that you can get is from someone who is not
25 your mom, not your dad, not your child's mom. And that comes

1 from Pamela Blackburn. That was Exhibit 2. When he
2 participated in Mecklenburg County Area Mental Health
3 Substance Abuse and Treatment Program.

4 In that program he didn't simply do the things that
5 he needed to do to help himself in recognition of the drug
6 problem that he has as noted in the Presentence Report. But
7 they went to the point of spelling out how he went and took
8 the opportunity to help other people when he could have been
9 doing other things with his time. I think that is in large
10 measure who Gerren Darty actually is.

11 You see from the criminal history that the
12 significant criminal history is that which relates
13 specifically to this offense, the drug trafficking offense in
14 Greensboro.

15 So I think when you take the body of his history,
16 the fullness of his history, that a fair sentence would likely
17 be something -- the Court of course has the Guidelines. The
18 Court is not controlled by the Guidelines. That in comparison
19 to other individuals, the Guideline range of 36 is too high.

20 A criminal history or a prison term that perhaps
21 could be as low as 188 as high as 235 months is too high, and
22 I'm gonna ask the Court to consider a sentence below that
23 Guideline.

24 I'm going to ask as well that the Court allow the
25 young man to participate in any substance abuse programs that

1 may exist in the Bureau of Prisons while he is there and have
2 access to that. That he have access to furthering his
3 education while he is in the Bureau of Prisons. Ask that he
4 be designated to a facility as close to Los Angeles,
5 California as possible.

6 Now, as to his interaction with the government and
7 their agents. To be certain, Mr. Darty did not agree to meet
8 with and be debriefed by the government in order to lie to
9 them. He had already pled. And if he was going to lie to
10 them -- and we discussed as I do with all my clients -- the
11 parameters of cooperation. How that can be beneficial. How
12 it would not be beneficial if deemed to be untruthful.
13 That -- I don't believe that's what he did. Now they have a
14 broader finding of what I have. I have what they sent me. I
15 have what he said.

16 The things that they have indicated on lies, we
17 could go on all day about that, I don't want to go tit for tat
18 on that. But the situation and the car with the money what he
19 said was, Parker Coleman gave the gentleman envelopes. Those
20 envelopes contained money, then they contained money. He did
21 not see money. He's not going to lie on Parker Coleman or
22 anyone else. That was the basis for that.

23 There are other circumstances that they indicated.
24 You'll always have situations in conspiracies where one person
25 says one thing, one person says something a little different.

1 The bottom line is that he acknowledged at his plea colloquy
2 that he was involved and he accepted his responsibility for
3 that.

4 He is a friend of Parker Coleman. But he has no
5 interest in protecting Parker Coleman.

6 As a matter of fact, he did in fact, on a social
7 trip to Los Angeles for Parker Coleman, not so much to meet
8 other drug dealers, but to be friends of his and his family.
9 Parker Coleman developed a relationship with the other
10 individuals during that meeting. That didn't have anything to
11 do with Mr. Darty. That had to do with Parker Coleman, that
12 had to do with Milton Adams. And Parker Coleman will have to
13 deal with these things at his trial and at his day of
14 sentencing, if in fact he is convicted.

15 Again, I think when you look at Mr. Darty, and you
16 look at his role, when you compare that to all of the other
17 individuals that will likely, ultimately, be before this
18 court. It's not going to be fair to comparatively if this
19 fellow ends up with 188 months or more, where other people are
20 gonna end up with three years, five years, in time of that
21 nature.

22 So again, I ask that the Court fashion a sentence
23 that's not greater than necessary to achieve statutory
24 purposes of punishment.

25 And when you have someone with his background, with

1 his opportunities, with things that he's done, with his lack
2 of other criminal exposure, that a sentence that is below the
3 Guideline of 35, criminal history level II, would be
4 sufficient, would promote deterrence, but would also give this
5 gentleman an opportunity to look forward to getting out and
6 doing the positive things that he looks forward to doing. I
7 think one of those things was the young lady indicated she has
8 a job waiting for him with a company she's developing.

9 That's our presentation, Your Honor. Mr. Darty
10 would like to be heard.

11 THE COURT: Mr. Exum, thank you.

12 Mr. Darty, it is your right to address the Court.
13 I'll be glad to hear from you anything you wish to tell me.

14 THE DEFENDANT: First of all, Your Honor, I just
15 want to say that, you know, it took a lot of time for me to
16 understand that the things my parents did for me were, you
17 know, going to be beneficial to me when I got older. Like he
18 said, I been given a lot of opportunity by my parents and I
19 didn't appreciate them. I can be honest about that now, you
20 know. And it took the time that I was in here for the last 13
21 months to really should have been. The things as far as my
22 father did, as far as discipline, structure, and extra
23 curricular activity, to really understand my father had so
24 much pushed me to be anything I wanted to be. I hate to have
25 to admit it now, but I will. When I make the decision to do

1 what I was doing in 2008, early 2009, a large part of that was
2 because I was afraid of success, as far as how my parents set
3 me up for it. I thought I could do something different and
4 still be successful in the light of having money. And you
5 know, it was a bad decision. I made that mistake.

6 Early on in 2009, as they said when they especially
7 got taken up with my co-conspirators of my first indictment,
8 you know, they continued on. I decided to go back to
9 California to spend time with my son. And that's when I kind
10 of reassessed myself and the things I was doing. And I went
11 to school, got a job. I talked to my father and my mother.
12 And you know, at that time I had talked to the charge in
13 August 2008. And you know, I opened up my father, me and my
14 dad came to an understanding that, you know, in order to be a
15 father of his nature to my son, I had to, you know, try to
16 pace my life and not try to rush through it. And you know I
17 made the decision to do that.

18 You know, my attorney told me, you know, not to go
19 into it, I won't. But for the most part, Your Honor, I can
20 tell you honestly that I didn't participate in any illegal
21 activity at that time. I made my mind up to commit to my son,
22 period point blank. I've done wrong. You know, I'm not
23 trying to dispute that at all.

24 And, you know, ever since 2009 I've been just trying
25 to get my life back on track. Like he said, going to school.

1 I've been trying to study psychology, even though I found it
2 interesting just trying to help children, and anybody I can
3 really, because I believe in prevention rather than
4 rehabilitation.

5 I mean, personally, I mean I don't think jail is the
6 place to go for a person to change their life. I think you
7 know, rather than have to make a person change their life, you
8 should just try to introduce them and give them opportunity
9 early on.

10 So, you know, I like you to really just be lenient
11 with me. You know, I'm just begging for your mercy. I want
12 to be a part of my son's life while he's still in the learning
13 stages of his life.

14 You know, I have a God son's that's eight years old
15 and he's going the wrong direction. I want to be there for
16 him. You know, I don't want to get out and hearing that he's
17 going through things I'm going through now. Because the
18 opportunity wasn't afforded to him. He doesn't have a father
19 in his life. And I've done what I could with the time that
20 I've had to try to implement some kind of discipline in him
21 like my father did me, and give him opportunity.

22 You know, I have my friends and some of my family
23 members here to support me. They been great to me. I know
24 I'm not the best person, but I love people, man. That's just
25 how I was raised to be selfless. And I've done my part with

1 that, I feel.

2 And just to close out, I just want to say something.
3 I read a story. That's why I know this time was a mistake.
4 And at the end of this story was a quote, and I feel like this
5 describes exactly how I felt.

6 The story is "The Quiet Game" by Greg Iles who said,
7 our actions have consequences that last long after us,
8 entwining the present with the future in ways we can not
9 understand. I will do things that make me happy today, not
10 going to live with for the next 10 years of my life.

11 So thank you for your time, Your Honor.

12 THE COURT: I enjoy Greg Iles books. Let me ask you
13 this. When do you believe that you last participated in this
14 conspiracy? Was it after your August --

15 THE DEFENDANT: No. It was January, January 2009.
16 When that crate got taken, I was pretty much done. I mean, I
17 was just discouraged, to be honest with you. I mean, I lost a
18 lot of money in that crate. And at the time we thought
19 somebody stole it. There was no trust there. Like I said, I
20 went my separate way. I never -- I never broke my
21 relationship with Parker, because Parker was my friend. I
22 still consider Parker to be a friend. You know, I can't say
23 what he did or didn't do because I was in California. My life
24 was about my son, about going to school and trying to reassess
25 some things. I came out here, I visited him, you know what I

1 mean. I'm not going to deny that. I came for his sister's
2 graduation. She graduated from high school, because that's a
3 friend. I'm not gonna deny my friend. But at the same time,
4 I can't say what he has and has not done. Whether or not they
5 believe my honesty in that, you know, I can't -- I can't argue
6 with them. But I mean, I have no reason to lie. I signed my
7 plea. The last time I plea I took my guilt.

8 THE COURT: All right, thank you.

9 Mr. Kaufman.

10 MR. KAUFMAN: Your Honor, I hear Mr. Darty saying
11 he's got no reason to lie. I'm just dumbfounded quite
12 honestly, Your Honor.

13 Mr. Darty is a drug trafficker. He's responsible
14 for over 1,000-kilograms of marijuana. Over 1 million dollars
15 of marijuana and marijuana proceeds that he by his own
16 admission was reasonably foreseeable to him.

17 We've tried over and over to get Mr. Darty to plead
18 and to cooperate. With Mr. Exum's permission, I even spoke to
19 Mr. Darty's father, because we were trying to get Mr. Darty to
20 do, at the time, pre-*Simmons*, he was looking at 20 years or
21 more. And we were trying to get him to cooperate.

22 It's inexplicable to me at the time when we
23 debriefed him -- you got to understand, Your Honor,
24 Mr. Coleman seems to have a hold on people that just -- no one
25 wants to cross him. He's in jail. But there's just

1 something -- he's got a hold on people. And I believe that
2 Mr. Darty was and actually still is under this control.

3 Mr. Darty just now said that his last activity was
4 after the crate. I just consulted with Agent McDonald. And
5 in addition to this July 2010 incident, which by the way he in
6 his debriefing denied seeing any exchange. He did not admit
7 seeing the envelopes being transacted.

8 In addition to that, during his debrief he said that
9 after that crate was found, that he continued to work with
10 Jerry Davis, who is one of Mr. Coleman's co-conspirators, by
11 sending marijuana to Jerry by FedEx. That was one of the
12 other methods. Basically three methods were the crates, FedEx
13 and the airlines.

14 And so he, even in his own debrief with law
15 enforcement admitted that after that crate he continued to
16 send marijuana. So I'm troubled. I mean, I have to say that,
17 you know, the sentence he's looking at is because of his prior
18 conduct and his conduct in this conspiracy.

19 I do believe that the bottom of the guidelines of
20 188 months is sufficient, but not greater than necessary.

21 But at this point there's no reason to be trying to
22 exculpate or at least not say something about Mr. Coleman, and
23 it's just troubling. But I am confident that he was in fact
24 taking part in this conspiracy after January 2009 even by his
25 own admission to law enforcement.

1 MR. EXUM: Your Honor, if I did not, I do request
2 that he be designated to a facility close to Los Angeles.

3 THE COURT: Yeah, you mentioned that, thanks.

4 This has been a protracted hearing, a lot of the
5 issues dealt with the legal significance of certain things.
6 Now the Court's sentence is required to accomplish the
7 sentencing purposes of Section 3553(a), which include the need
8 for the imposed sentence to reflect the seriousness of the
9 offense, promote respect for the law, just punishment,
10 adequate deterrence and protect the public from further crimes
11 of the defendant.

12 The Court is also instructed to take into
13 consideration the history and characteristics of the
14 defendant, and the nature and circumstances of the offense.

15 Appears to the Court that the defendant comes from a
16 strong family background; that he has had work, athletic and
17 other participations that have been positive in his life, and
18 those are all taken into consideration by the Court.

19 Does seem to be a strong relationship between the
20 defendant and his son. And that at some point in this whole
21 conspiracy, that although the defendant did not formally
22 withdraw from the conspiracy, that he indicates that he focus
23 his life more on his family in California than the drug
24 activities.

25 The other side of the ledger is the seriousness of

1 this offense. This was a conspiracy which involved the
2 distribution of thousands of kilograms of marijuana,
3 substantial amounts of money were laundered through the
4 defendants and others efforts. And that the defendant played
5 a substantial role over a long period of time in the
6 trafficking of marijuana, in thousand kilogram quantities.

7 Pursuant to the Sentencing Reform Act of 1984, it is
8 the judgment of the Court that the defendant Garren Darty is
9 hereby committed to the custody of the Bureau of Prisons to be
10 in prison for a term of 188 months on each count to be served
11 concurrently.

12 A 188 month sentence is sufficient but not greater
13 than necessary to accomplish the sentencing objectives that
14 the Court's previously discussed.

15 Mr. Darty helped transport and distribute thousands
16 of kilograms of marijuana from California to Charlotte, aided
17 in the laundering of proceeds from those sales, and he did so
18 over a long period of time, and even an arrest within that
19 time period seemed not to deter him from his continued
20 involvement in the conspiracy and association with Coleman and
21 others.

22 And a substantial sentence is designed to protect
23 the public, to deter criminal conduct, and to reflect the
24 seriousness of the criminal activities among other purposes
25 set forth in 3553(a).

1 The Court calls to the attention of the custodial
2 authorities that the defendant has a history of substance
3 abuse and recommends that he be allowed to participate in any
4 available substance abuse treatment program while
5 incarcerated, and if eligible, receive the benefits of 18
6 United States Code Section 3621(e)(2).

7 The Court also recommends that the defendant be
8 allowed to participate in any educational and vocational
9 opportunities while incarcerated.

10 The Court recommends to the Bureau of Prisons that
11 the defendant be designated to a facility as close to Los
12 Angeles as possible, consistent with the needs of the federal
13 Bureau of Prisons.

14 Further ordered that the defendant be required to
15 support all dependents as outlined in the Presentence Report
16 from prison earnings while incarcerated.

17 Upon release from imprisonment, the defendant shall
18 be placed on supervised release for a term of three years.
19 This term consists of three years on Count One, and term of
20 three years on Count Two, both terms to run concurrently.

21 Within 72 hours of release from the custody of the
22 Bureau of Prisons the defendant shall report in person to the
23 probation office in the district to which he is released.
24 While on supervised release the defendant shall not commit
25 another federal, state or local crime, shall comply with the

1 standard conditions that have been adopted by the court in the
2 Western District of North Carolina.

3 It is ordered that the defendant pay to the United
4 States a special assessment of \$200. The Court finds that the
5 defendant does not have the ability to pay a fine or interest,
6 will waive payment of a fine and interest in this case.

7 The defendant shall forfeit any interest he has in
8 the property set forth in the forfeiture notice of the
9 indictment, and any other property seized by the United States
10 as a result of this investigation.

11 Special assessment is due and payable immediately.

12 Other than what we've already discussed, is there
13 any legal reason why sentence should not be imposed as stated?

14 PROBATION OFFICER: Based on your rulings, Your
15 Honor, Count One, the statutory guideline range the supervised
16 release has to be at least five years now. It can no longer
17 be three to five. That was based on the safety valve which he
18 no longer has.

19 THE COURT: So I do stand corrected. And the term
20 of supervised release which I indicated was three years, I
21 should have indicated five, and I will correct myself and
22 order a term of supervised release of five years.

23 PROBATION OFFICER: Thank you, Your Honor.

24 MR. KAUFMAN: Yes, sir.

25 THE COURT: Anything else?

1 MR. EXUM: No, sir.

2 MR. KAUFMAN: No, Your Honor.

3 THE COURT: Any counts to be dismissed?

4 MR. KAUFMAN: No, Your Honor.

5 THE COURT: Very well. Let the sentence be imposed.

6 Mr. Darty, you can appeal your conviction if you
7 believe that your guilty plea was somehow unlawful or
8 involuntary, or if there's some other defect in the proceeding
9 that was not waived by your guilty plea. You also have a
10 right to appeal your sentence under certain circumstances,
11 particularly if you think the sentence is contrary to law.

12 Any notice of appeal must be filed within 14 days
13 from the entry of judgment. If you are unable to pay the cost
14 of an appeal, you may apply for leave to appeal with no cost
15 to you. And if you request, the clerk of court will prepare
16 and file a notice of appeal on your behalf.

17 The Court recommends that you talk to your attorney
18 about these appeal rights, especially about the impact on
19 these rights of any waiver of appeal provision in your plea
20 agreement. But do you understand these rights as the Court
21 has read them to you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Anything further from either side?

24 MR. KAUFMAN: No, Your Honor.

25 THE COURT: This matter is concluded.

1 Mr. Darty is remanded to the custody of the marshals
2 at this time.

3 (The matter is concluded at 12:43 p.m.)

4 * * * * *

5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF NORTH CAROLINA
7 CERTIFICATE OF REPORTER

8 I, Laura Andersen, Official Court Reporter, certify
9 that the foregoing transcript is a true and correct transcript
10 of the proceedings taken and transcribed by me.

11 Dated this the 21st day of February, 2012.

12 s/Laura Andersen
13 Laura Andersen, RMR
14 Official Court Reporter
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